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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225471
Party	Defendant EDDIE LABS, INC.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Nature's Way Products, LLC)	Opposition No. 91225471
)	
Opposer,)	Mark: 
)	
v.)	
)	Serial No.: 86,591,274
Eddie Labs, Inc.)	Filing date: Apr. 8, 2015
)	Publication date: August 25, 2015
Applicant.)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, EDDIE LABS, INC., by and through its attorneys, herby answers the Notice of Opposition filed by Nature's Way Products, LLC.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition and therefore denies them.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice of Opposition and therefore denies them.
3. Applicant admits the prosecution history of trademark Registration No. 2,574,627 ("the '627 Registration") supports the registration and cancellation dates of said Registration. To the extent any of the other allegations contained in this Paragraph warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Notice of Opposition and therefore denies them.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Notice of Opposition and therefore denies them.
5. Admitted.

6. Admitted.
7. Admitted.
8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Notice of Opposition and therefore denies them.
9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Notice of Opposition and therefore denies them.
10. Paragraph 10 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to admit or deny these allegations and therefore denies them.
11. Paragraph 11 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief and therefore denies them.
12. Paragraph 12 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief and therefore denies them.
13. Paragraph 13 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief and therefore denies them.
14. Paragraph 14 of the Notice of Opposition require no response.
15. Paragraph 15 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to admit or deny these allegations and therefore denies them.


It is well settled that one feature of a mark may be more significant or dominant in creating a commercial impression in a likelihood of confusion analysis. “When assessing the likelihood of confusion between two marks, one must determine whether there is a

portion of the mark that is dominant in terms of creating a commercial impression. Although there is no mechanical test to select a ‘dominant’ element of a compound word mark, consumers would be more likely to perceive a fanciful or arbitrary term rather than a descriptive or generic term as the source-indicating feature of the mark.” T.M.E.P. § 1207.01(b)(viii). “In identifying the dominant feature of a mark, it is likely the first part of a mark that is most likely to be impressed upon the mind of a purchaser and remembered.” Jeffery A. Handelman, Guide to TTAB Practice § 605[F] (2014); *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372-73, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Edom Laboratories Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012) (noting that the first part of opposer’s mark is “most likely to be impressed upon the mind of a purchaser and remembered.”); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012) (“purchasers in general are inclined to focus on the first word of portion in a trademark.”); *In re Cynosure Inc.*, 90 USPQ2d 1644, 1646 (TTAB 2009); *Everready Battery Co. v. Green Planet Inc.*, 91 USPQ2d 1511, 1518 (TTAB 2009); *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752, 1755 (TTAB 2009) (noting that it is the first portion of a mark that is more likely to make an impression on potential purchasers).

Applying these principles, Opposer’s registrations, ‘ALIVE!’ and related registrations are word marks that do not contain any design or color; whereas Applicant’s



combine words and logo with color and design. Consumers’ first impression of Applicant’s mark is the highly stylized ‘S’ and the colored leaves for this mark. Common sense dictates that consumers and laypersons can easily discern the two marks do not have similarity other than the less prominent portion of words contained in Applicant’s mark. The overall commercial impressions in between the Opposer’s

‘ALIVE’ word marks and Applicant’s  mark are strikingly different such that the apparent and obvious differences are sufficient to avoid a likelihood of confusion in the market place. As a result, Applicant’s design mark is clearly distinguishable from Opposer’s word mark and shall be allowed to proceed to registration.

16. Paragraph 16 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein

warrants a response, Applicant is without knowledge or information sufficient to form a belief as to admit or deny these allegations and therefore denies them.

As stated in Paragraph 15 above, Applicant's design mark is sharply and clearly distinguishable and differentiable from Opposer's word mark. And since there is no confusion, there will not be a connection between the two marks as to suggest a false association between the marks.

17. Paragraph 17 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to admit or deny these allegations and therefore denies them.

18. Paragraph 18 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to admit or deny these allegations and therefore denies them.

19. Paragraph 19 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

20. Paragraph 20 of the Notice of Opposition requires no response.

21. Paragraph 21 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

22. Paragraph 22 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

23. Paragraph 23 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

24. Paragraph 24 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

25. Paragraph 25 of the Notice of Opposition states a legal conclusion to which no response is required. To the extent any of the allegations contains therein warrants a response, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

WHEREFORE, Applicant prays that this Opposition be dismissed and that Applicant's mark be allowed to proceed to registration.

Attorney for Applicant
EDDIE LABS, INC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joanna Y. Tsai', with a stylized flourish at the end.

Dated: January 30, 2016

By: _____

Joanna Y. Tsai, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Answer to Notice of Opposition has been served upon counsel for Opposer by first class mail, postage prepaid as follows:

Matthew J. Gipson
Price Heneveld LLP
695 Kenmoor, S.E. /P.O. Box 2567
Grand Rapids, Michigan 49501
Attorney for Opposer

On this 30th day of January, 2016.

A handwritten signature in dark ink, appearing to read 'Joanna Y. Tsai', with a horizontal line extending to the right.

Joanna Y. Tsai
JYTLAW